The WCB Appeal Systems: Are They Working Well?

- **Final Report**

REVIEW COMMITTEE
OF THE
WORKERS' COMPENSATION BOARD
APPEAL SYSTEMS

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November, 2000

Honourable Clint Dunford
Minister Responsible for the Workers' Compensation Board
10800 97 Avenue
324 Legislature Building
Edmonton AB T5K 2B6

Dear Mr. Dunford:

It is with pleasure that I forward the final report of the Workers' Compensation Board (WCB) Appeals System Review Committee. This Report fairly represents the findings of our Committee. The development of the final recommendations was based on extensive input from injured workers, employers and advocates, all of whom had experience in the appeal processes of the WCB and the Appeals Commission. We were also guided by the experiences of some Canadian provinces and countries throughout the world. As part of the Report, the Committee wishes to provide the following comments and observations regarding the WCB and the Appeals Commission.

Alberta's compensatory system for injured workers has been reviewed several times in the past. The recommendations in these reviews resulted in substantive and positive change not only for workers but also for employers. We believe our recommendations have continued in that tradition and once implemented, stakeholder and public satisfaction with the appeals process and its overall effectiveness will significantly improve.

You will note that we have dealt with the independence of the Appeals Commission by introducing a system that will make the appeals process more accountable. The recommendations will improve not only the accountability of the appeals process but also some of the administrative procedures immediately preceding an appeal. Recommendations dealing with reporting and appointment structures, as well as a potentially more active role by the Courts, will address numerous issues of fairness.

Each Committee member has expressed concern about what seems to be a well-entrenched culture of denial within the WCB and one which treats many long-term disability claimants with suspicion. We feel quite confident that, upon implementation of our recommendations, an appellant will receive fairer treatment and over time the present culture will transform into something more palatable.

As previously mentioned, we listened to a number of presentations from appellants, employers and their associations, lawyers and workers' advocates. You will note from the statistics contained in our report, that there was broad dissatisfaction with the present system, however, employers who have large numbers of employees generally did not share in that dissatisfaction. It would seem that the imbalance of the system is self-evident when comparing responses from workers and employers and is clearly a defect in the current system. It is this very defect that leads to cycles of public dissatisfaction. We cannot envision any effective way to change this cycle without introducing accountability into the system. We suggest that the implementation of the recommendations contained in the report will not adversely affect the employer groups and that if Albertans are to have a more effective and fairer system, changes must be made.

It is important to note that there are considerable differences between our survey results and the WCB statistics measuring claimant satisfaction as published in their 1999 Annual Report. Although the WCB may use their findings to question our report, we believe that their statistical information and ours is not comparable. The Board's findings indicate a satisfaction rate of 77% for workers and 87% for employers. Our survey results indicate an overall *dissatisfaction* rate of 70% with the effectiveness of the system. This statistic includes responses from appellants, employers and advocates. It is also important to keep in mind that the majority of our survey respondents were individuals who had a **dispute** with their case manager's decision as well as the outcome of their first or second levels of appeal. The very fact that a claimant finds it necessary to appeal makes the nature of our target group different from the general claimant population being surveyed by the WCB.

Our discussion paper was entitled, "The WCB Appeal Systems: Are They Working Well?" In conclusion, our findings indicate they are not. The greatest and most immediate need is to bring **accountability** into the appeals process. If government wishes to maintain an arm's length relationship with the WCB, the only effective recourse to guarantee accountability is to strengthen the Appeals Commission and improve access to court review. This will ensure that not only is accountability present but it will also be seen to be present. If, at the end of the day, an appellant can say, "I did not like the outcome of my appeal but I believe the appeal process was fair," much will have been achieved.

The Committee is respectfully requesting to meet with you to discuss our findings and recommendations prior to the middle of November. We also wish to offer our services to act as a steering committee to oversee the implementation of the recommendations contained in our final report.

Apart from the primary purpose of this letter, I wish to thank you for appointing me as Committee Chairman. Your choice of Robert Blakely, Fred Clarke, Sharon Copithorne and Denis Herard as Committee members was excellent. Each member made valuable contributions to an immense and complex task. The assignment of Lorraine Campbell as executive support to myself was opportune. She played an important role in the development of the final recommendations and if I were to take on a similar role again, I would value her assistance.

In conclusion, the following signatures of Committee members confirm their agreement to the information and recommendations contained in our final Report.

Samuel Friedman, Q.C.,
Committee Chairman

Robert R. Blakely,
President, Alberta Building Trades Council

Fred Clarke,
Alberta Business Community Representative

Sharon Copithorne,
Executive Director, Alberta Construction Association

Denis Herard,
MLA, Calgary-Egmont

A. Scope and Purpose of the Appeal Systems Review

On February 11, 2000, the Honourable Clint Dunford, Minister Responsible for the Workers' Compensation Board (WCB), announced the formation of the Review Committee of the Workers' Compensation Board Appeal Systems.

The scope and purpose of the Committee was to:

- Examine the WCB Appeal Systems, consisting of the Assessment Review Committee and the Claims Services Review Committee at the first level, and the Appeals Commission at the second and final level;
- Conduct a paper review of practices in other jurisdictions;
- Determine the effectiveness of the Appeal Systems in serving Alberta employers and workers; and,
- Make recommendations for improvement to the Appeal Systems.

B. Expectations of the Appeal Systems Review Committee

The expectations of the Appeal Systems Review Committee were to:

- Develop a discussion paper describing the appeal systems and, upon careful review of the appeal systems processes, identify probable key issues for review by stakeholders;
- Prepare a stakeholder survey to accompany the discussion paper;
- Analyze and summarize stakeholder input received from returned surveys and other sources;
- Draft a final report containing recommendations for improvement to the appeal systems; and,
- Submit the final report in October 2000 to the Minister Responsible for the Workers' Compensation Board.

C. Appeal Systems Review Committee Membership

The members of the Appeal Systems Review Committee are:

- Chairman: Samuel Friedman, retired Judge, Alberta Provincial Court
- Denis Herard, MLA Calgary-Egmont
- Robert R. Blakely, President, Alberta and N.W.T. Building and Construction Trades Council
- Sharon Copithorne, Executive Director, Alberta Construction Association
- Fred W.R. Clarke, Alberta Business Community Representative

Lorraine Campbell served as the Committee Secretariat and Executive Support to the Chairman.

D. Structure of this Report

The structure of this report is as follows:

- Section I is a letter from the Committee Chair to the Honourable Clint Dunford, Minister Responsible for the Workers' Compensation Board.
- Section II is the Introduction.
- Section III gives an overview of the process used by the Committee to gather information and feedback from key stakeholders.
- Section IV offers a summary of feedback received by the Committee from key stakeholders.
- Section V contains the full description and rationale for each of the Committee's recommendations.
- Section VI provides a proposed timeline for implementing the Review Committee's recommendations.

- Section VII contains the Appendices of the Report, including:
  - Appendix 1: Sample Newspaper Advertisements
  - Appendix 2: Sample Draft Legislation
  - Appendix 3: Proposed New Appeal Systems Process Map

A. Presentations to the Committee

A number of stakeholder groups and individuals met with the Review Committee during February to June 2000 and made formal presentations. These included:

- Ms. Mary Cameron, President and Chief Executive Officer, WCB and Mr. Douglas R. Mah, Secretary and General Counsel, WCB
- Mr. George Pheasey, Chairman and Chief Appeals Commissioner, Appeals Commission for Alberta Workers' Compensation
- Alberta Injured Workers' Society
- Ms. Marla Buchanan, MV Consulting Inc.
- Ms. Trish Curtin, Curtin Consulting
- Mr. Allan Jobson, The Lobbyist
- Mr. Brian E. Koehli, Durocher Simpson Barristers and Solicitors
- Mr. Howard Goldford and Mr. Randy Hauge, Goldford Law Offices
- Ms. Joan Kosak, Matrix Consulting Group
- Ms. Barbara McKinley, The Worker's Advocate
- Drs. Lappi, Lauber, and Callaghan, WCB Medical Services
- Mr. Jeff Moore, Solicitor, Workers' Compensation Board
- Ms. Sandy Stevenson, WCB Administrator, Suncor Energy Inc. Oil Sands
- Mr. Gary Webster and Mr. Pierre Alvarez, Canadian Association of Petroleum Producers
- Ms. Catherine Yakimec, WCB Administrator, Syncrude
- Mr. R.S. (Ron) Czura, Shell Canada

B. Written Submissions

In addition to those who made presentations to the Committee, there were also those who sent written submissions to the Committee throughout the course of the Committee Review. These included:

- Ms. Audrey M. Cormack, WCB Trade Union Coalition
- Mr. Patrick J. Delaney, Manager, Health, Safety and Environment, Petroleum Services Association of Canada
- Mr. M.R. Fodey, Manager, General Claims, Canadian Pacific Railway
- Mr. Ronald S. Girvitz, Wilson Laycraft Law Officers
- Ms. Melanie Goroniuk, President, Industry Task Force Association
- Mr. Don Herring, Canadian Association of Oilwell Drilling Contractors
- Mr. W.J. Johnson, McGown Johnson, Barristers and Solicitors
- Allan J. McCalder, Human Resources Director, City of Fort Saskatchewan
- Mr. Gerry Miller, Advocate
- Mr. Robert Poxon, Robert Poxon and Associates
- Mr. Bradley Wright, BJW Consulting

The Office of the Review Committee also received many letters, phone calls and visits from WCB claimants, advocates, and employers. The Chair met privately with several individuals wishing to convey their views about the WCB Appeal System and the Appeals Commission. The presentations, written submissions, and meetings provided the Committee with a rich variety of perspectives. They enabled the Committee to develop its primary approach to stakeholder information gathering: a public Discussion Paper entitled *The WCB Appeal Systems: Are They Working Well*?

C. Discussion Paper and Accompanying Stakeholder Survey

The Discussion Paper raised 28 key issues that were frequently discussed by Appeal Systems stakeholders in their presentations and written submissions. It explained the major players in the WCB Appeal Systems (Claims Services Review Committee, Appeals Advisors, the Assessment Review Committee, and the Appeals Commission) as well as their roles, reporting relationships, and relevant statistical data.

Accompanying each Discussion Paper was a 35-question survey that sought to gather input from key stakeholders (workers, employers, and advocates) on the issues raised in the Discussion Paper as well as to solicit their ideas on recommendations for improvements to the Appeal Systems.

An initial mail out of 1,140 Discussion Papers and accompanying surveys were mailed out to workers, employers, and advocates in mid-June. This included a random sample of:

- Claims Services Review Committee appellants who appealed during 1997, 1998, or 1999;
- Appeals Commission appellants who appealed during 1997, 1998, or 1999;
- Albertans who had written to the Honourable Clint Dunford regarding Workers' Compensation concerns; and,
- Individuals who had sent a written submission or made an oral presentation to the Review Committee or who had requested a survey.

Advertisements notifying members of the public of the WCB Appeal Systems Review and inviting them to call for a Discussion Paper and Stakeholder Survey appeared twice in the nine major Alberta daily newspapers (June 22nd and July 12th) and 100 weekly newspapers (the weeks of June 26th and July 17th). As a result, a further 860 Discussion Papers and surveys were sent out during the month of July (see Appendix 3 for sample advertisements).

Out of 2,000 stakeholder surveys that were mailed out during June and July, 529 were returned, a response rate of 26 percent. A summary of the stakeholder survey feedback is provided in Section IV .

A. General Feedback

NOTE: The statistically valid "round error" factor has resulted in some cases with totals that slightly exceed 100 percent.

1. Composition of Stakeholder Respondents

- Of the 529 surveys returned to the Review Committee, 416 (79%) were from WCB Claimants, 59 (11%) were from Employers, 41 (8%) were from Advocates, and 13 (2%) were Others.
- A total of 519 respondents (98%) had taken at least one appeal forward to the WCB Appeal Systems. Of these, 144 (28%) had taken one appeal forward to the WCB Appeal Systems, 264 (51%) had been forwarded 2- 5 times, 50 (10%) had been forwarded 6 – 10 times, and 61 (12%) had gone forward more than 10 times.
- In response to their most recent experience with the WCB Appeal Systems, 271 (52%) indicated it had been within the last year, 209 (40%) said it had been 1 – 4 years ago, and 45 (9%) said it was 5 years ago or more.

2. Overall Effectiveness of the WCB Appeal Systems

- When asked how they would rate the effectiveness of the WCB Appeal Systems in terms of their own experience:
  - 364 respondents (70%) rated the systems' effectiveness as "Poor"
  - 63 respondents (12%) rated the systems' effectiveness as "Fair"
  - 59 respondents (11%) rated the systems' effectiveness as "Average"
  - 33 respondents (6%) rated the systems' effectiveness as "Very Good"
  - 4 respondents (1%) rated the systems' effectiveness as "Excellent"

- Claimants who responded to the survey rated the Appeal Systems' effectiveness the lowest among all respondent types. On average, on a scale from 1 "Poor" to 5 "Excellent", claimants rated the effectiveness of the Appeal Systems an average of 1.4 out of 5. Advocates rated the effectiveness of the Appeal Systems an average of 1.9 out of 5. Employers rated the systems' effectiveness the highest, an average of 2.8 out of 5.

- Ratings of effectiveness declines with the number of appeals made to the Appeal Systems.

3. Effectiveness of the WCB Process for Reviewing Medical Issues Related to a Claim

- Seventy-five percent of respondents rated the effectiveness of the WCB process for reviewing medical issues related to a claim as "Poor". Claimants and advocates rated the medical review system far lower than did employers who responded to the survey.

B. Appeal Level One – Claims Services Review Committee and Assessment Review Committee

- Four hundred and eighty respondents (91%) indicated they had personal experience with the first level of the WCB appeals process.

- When asked how long it took from the time a letter of appeal was sent to the case manager to the time the claimant received the case manager's file review decision:

    - 24% of respondents said it took less than 3 months;
    - 38% of respondents said it took 3 – 6 months;
    - 16% of respondents said it took 6 – 9 months; and,
    - 22% said it took over 9 months.

- manager's decision: When asked how long it took to receive a decision from the Claims Services Review Committee after they filed an appeal of the WCB case

    - 36% of respondents said it took less than 3 months;

- 31% of respondents claimed it took 3 – 6 months;
- 17% of respondents said it took 6 – 9 months; and,
- 17% said it took over 9 months.

- When asked, "If your appeal stopped at the first level of appeal, why did this occur?"
  - 22% of respondents indicated they received a decision acceptable to them;
  - 23% of respondents said they lacked the financial resources to continue their appeal;
  - 23% of respondents found the appeals process too time consuming or difficult; and,
  - 32% of respondents listed a range of reasons for discontinuing the process, including the refusal of the WCB to either accept or deny the ruling and that the WCB/CSRC believed they were right.

- When respondents were asked what options they favour for the Claims Services Review Committee and/or the Assessment Review Committee:
  - 34% suggested eliminating both committees;
  - 28% suggested retaining the current structure of two separate committees;
  - 18% suggested merging the two into a single committee; and,
  - 21% listed a range of other suggestions, including the need for honesty among committee members, letting the claimant speak to the medical advisors, and making the CSRC an autonomous avenue for appeal.

C. Appeal Level Two – Appeals Commission

- 75% of respondents had personal experience with the second level of the appeals process.
- In terms of decisions received from the Appeals Panel, responses indicated that:

- 31% were not at all satisfied with the clarity of the decision while 10% were very satisfied;
- 41% were not at all satisfied with the completeness of information provided compared to 6% who were very satisfied;
- 58% were not at all satisfied with the fairness of the decision compared to 6% who were very satisfied; and
- 51% were not at all satisfied with the implementation of the decision while 5% were very satisfied.

- The 389 respondents who filed an appeal with the Claims Services Review Committee indicated that the time it took to receive a decision from the Appeals Commission was:
  - Less than 3 months (30%)
  - 3 – 6 months (30%)
  - 6 – 9 months (17%)
  - Over 9 months (23%)
- When respondents were asked how long it took to have their appeal decision fully implemented by the WCB:
  - 32% said it took less than 3 months
  - 22% said it took 3 – 6 months
  - 11% said it took 6 – 9 months
  - 35% said it took over 9 months
- When respondents were asked if, during their most recent appeal process, they used the services of an Appeals Advisor employed by the WCB, 269 respondents (52%) said they did not while 210 (41%) said they did.
- Those respondents who indicated they did not use the services of an Appeals Advisor indicated they did not do so because:
  - They were concerned about the impartiality of an Advisor (50%)
  - They were unaware the services were available (22%)

- They felt no need for such services (8%)
- Other responses (20%), included: they did not consider the Appeals Advisors useful, or they were denied access to an Appeals Advisor, or they hired a lawyer instead.

- 45% of respondents indicated they used the services of an advocate not employed by the WCB during their most recent appeal process.
- When asked to rate independent advisors with WCB Appeals Advisors, independent advisors (advocates) were rated more highly than the Appeals Advisors in all categories (see Table One).

Table One – Level of Satisfaction with Appeals Advisors and Advocates*

Response Item	Average Level of Satisfaction with Appeals Advisors	Average Level of Satisfaction with Advocates
Knowledge of Injury	2.56	3.57
Helpfulness	2.60	3.56
Clearly explaining appeal process	2.74	3.49
Effective representation	2.33	3.39

*Respondents' level of satisfaction choices ranged from 1 "Not at All Satisfied" to 5 "Very Satisfied".

[redacted]

A. Prior to Appeal

Issue: Case Manager's informal supervisory review prior to appeal

Before the appeal process begins at the Claims Services Review Committee level, the case manager or supervisor carries out an informal review. Under Section 12(3) of the Workers' Compensation (WC) Act, the WCB has the right to "reconsider any matter it has dealt with and to rescind or amend any decision or order previously made by it."

Some have questioned the appropriateness of this review, once claimants have formally notified their case manager of their intent to appeal. As well, some people were concerned about significant delays in completing the review. For example, when the initial decision remains unchanged, too much time elapses before the appeal is forwarded to the CSRC.

What the Committee Heard

> *"I believe that the present appeal system could be effective if the initial application for WCB benefits was handled with expertise and swiftness. My acceptance and payment for 5 ½ months of WCB benefits arrived after waiting seven months for a decision."*
>
> - **WCB Claimant**

Twenty-four percent of Review Committee survey respondents indicated that it had taken less than 3 months from the time they sent a letter of appeal to their case manager to the time they received the case manager's file review decision. Thirty-eight percent indicated it took three to six months, 16% said it took six to nine months, and 17% indicated it took over nine months.

Recommendation #1
It is recommended that *when a claimant has formally notified the WCB of his/her intent to appeal and before the appeal process is activated, the informal supervisory review shall be limited to a newly regulated time period of 30 days.* ***It is also recommended that*** *the time limit commence three days from the date that the Notice of Appeal is received by the Clerk's Office in the WCB (see Recommendation #3).* The case manager's supervisor must provide active guidance in the supervisory review process. The supervisor must sign the letter to the claimant describing the outcome of the review. In spite of the case manager's right to conduct this review, emphasis is to be placed on the importance of accuracy in the first decision to ensure that those who do not to appeal, are reasonably assured that their case has been accurately assessed for eligibility and rate of benefit. Section 12(3) of the Workers' Compensation Act (WC Act) is to be amended to reflect the occurrence of this review as well as the 30-day time limit.

Issue: Necessity of two levels of appeal and consideration of using alternative dispute resolution prior to commencement of appeals process.

Some claimants contend that they have few resources to obtain an objective opinion on the correct interpretation and application of policies related to their claims. Claimants often do not know what benefits they may be entitled to, or they may be unable to identify which policy interpretation affects their benefits. In these situations, the claimants either assume that they have been dealt with correctly, or they proceed to appeal. Some people suggest that there is a role for an alternative dispute resolution process prior to the appeal process.

What the Committee Heard

> *"Mediation might be considered for use in some circumstances, but our members are concerned that its use not result in delays that would extend the process."*
> - **Employer Submission**

Seventy-seven percent of survey respondents thought it was very important that a form of alternative dispute resolution be put in place to facilitate the appeals process. Eighty-six percent of respondents said that independent representation should be available to a claimant as part of the alternative dispute resolution process.

Eighty-six percent of claimants who responded to the survey strongly favoured the idea of a mediation process prior to the appeals process. Fifty-one percent of advocate respondents and 48% of employer respondents shared this view.

Ninety-one percent of claimants and 89% of advocates strongly favoured representation in the mediation process that is independent of the WCB. Fifty-two percent of employers shared this view.

Through researching other jurisdictions, the Review Committee has found an example of an effective alternative dispute resolution process that has operated since 1992 in the Australian state of Victoria. Known as the Victorian WorkCover Conciliation Service, its purpose is to help parties resolve their disputes, thereby eliminating the need to litigate the matter in court. According to a letter dated September 6th from Mr. Bill Mountford, Chief Executive of the Service, "it functions by involving workers, employers and insurers in an informal and non-adversarial process that aims to bring the parties to agreement by conciliation."

The types of disputes requiring mandatory conciliation by the Conciliation Service include those involving:

- compensation or benefits
- disputes over maims and pain and suffering
- entitlement under the Accident Compensation Act 1985

There were 31,340 compensation claims filed in 1998/99 with the Victorian WorkCover Authority (the Victorian state equivalent of Alberta's Workers' Compensation Board). Out of these total claims, 14,521 went to Conciliation Service where 8,219 claims (57%) were resolved, 4,565 (31%) were unresolved, 1,662 (11.5%) did not proceed, and 75 (.5%) were outside the jurisdiction of the Conciliation Service.

Recommendation #2

It is recommended that *a mandatory alternative dispute resolution process be established through Alternative Dispute Resolution (ADR) Officers located in the Office of the Appeals Advisor. These Officers would assist the claimant/employer and the WCB case manager/assessment adjudicator to resolve disputes once a claimant has filed a written Notice of Request to Appeal filed with the Clerk's Office. The ADR process will take no more than 45 days to complete and the timeline will be regulated. Where the dispute resolution process is not successful due to a continuing difference in medical opinion, the Clerk's Office would be responsible to assign the matter to the Medical Resolution Committee (see Recommendations #3, 5, and 7).*

Issue: Letters of Appeal lost in the System

What the Committee Heard

> *"An appeal was sent to the WCB on December 31, 1999. This appeal has not been forwarded to the Claim Services Review Committee. Letters urging this matter be settled were sent on February 20, 2000, April 23, 2000, and June 29, 2000. The WCB has not acknowledged any of this correspondence."*
>
> - **WCB Claimant**

The Committee received submissions from Claimants indicating that some letters of appeal seemed to get lost in the Appeal Systems. In another instance, a claimant reported that the case manager receiving the appeal letter kept it on file and delayed making his decision for many months. The following recommendation will help to correct delays such as this.

Recommendation #3

It is recommended that a Clerk's Office be established within the Appeals Commission, whose primary function would be to monitor and ensure compliance with all regulated timelines in the appeals process, commencing with the case manger's review. The Clerk's Office would be the first receiver of the written notice of Request to Appeal in the supervisory review process, the alternative dispute resolution (ADR) process, the Medical Resolution Committee review, and the appeals process. It would be responsible to direct the request to the Office of the Appeals Advisor. To minimize time loss within the 30-day time limit of the Case Manager/Supervisory review and, if the claimant wants the service, the Clerk's Office would ensure that an Appeals Advisor was assigned to the claimant or employer in a timely manner.

Upon the expiry of the 30-day time limit, the Clerk's Office would contact the appellant to determine their intent to continue or discontinue the appeal to the Appeals Commission. If there were a desire to continue the appeal, the Clerk's Office would notify the Alternative Dispute Resolution Office. At the same time, the Clerk's Office would mail the appellant clear, easily understood ADR and Appeal Systems information and all required forms.

B. Office of the Appeals Advisor

Issue: Appeals Advisors employed by the WCB

Appeals Advisors, who provide free advice and appeal representation to workers during first and second level appeals, are employees of the WCB. Some people believe that the Appeals Advisors may be biased in the advice they provide, because they lack independence from the WCB. There are also those who believe that small employers should have access to Appeals Advisors for free advice and appeal representation.

What the Committee Heard

"Appeals Advisors should be made available to employers for appeals of their assessments.... We propose a more comprehensive means of addressing the need for adequate representation. We propose a form of WCB "legal aid", where funding is made available to appellants to hire an advocate if they so choose."

- **Advocate Group**

"We concur that access to Appeals Advisors should be provided to employers to assist in obtaining appropriate, objective, knowledgeable representation."

- **Employer Group**

When asked why they did not use the services of an Appeals Advisor, 50% of survey respondents said they did not do so because they were concerned with the impartiality of an advisor. A further 22% were unaware that Appeals Advisor services were available to them. Of those who did use an Appeals Advisor, 43% said they were not at all satisfied with the effectiveness with which an Appeals Advisor represented them at the appeal hearing. Thirty-six percent of those respondents who used an Appeals Advisor were not at all satisfied with the Advisor's knowledge about their injury and 36% were not at all satisfied with the Advisor's helpfulness in answering their questions.

The Committee heard that an appellant's ability to seek outside representation is limited by his or her financial situation. Those who cannot afford outside representation have no other option but to draw upon the services of an Appeals Advisor.

Recommendation #4

It is recommended that *the Office of the Appeals Advisor report to the Ministry of Justice. Appeals Advisors would be selected based on their knowledge and experience with WCB adjudication and related disciplines. They are to have legal, paralegal, or proven related work experience and training.* ***It is further recommended that*** *all future Managers of the Office of the Appeals Advisor have a legal background or related work experience, since that position would be supervising Appeals Advisors who will be expected to have legal, paralegal or proven related work experience and training. Appeals Advisors should come from a variety of different backgrounds. The Office of the Appeals Advisor is to be expanded to include Alternative Dispute Resolution Officers.*

Recommendation #5

It is recommended that *since appellants can choose to receive the services of an Appeals Advisor who is paid by the WCB, they should also have a choice at no cost to them, as to whether they utilize the services of an external representative.* ***It is recommended that*** *the WCB provide funding for claimants to hire an external representative for the purpose of opinion gathering or representation. The amount provided to each claimant for hiring an external representative should be a nominal amount, for a reasonable amount of time, based on the Alberta Legal Aid Tariff.*

Recommendation #6

***It is recommended that** independent legal advice be paid for by the WCB and made available to employers for matters of assessment. The amount provided to each employer for hiring an external representative should be a nominal amount, for a reasonable amount of time, based on the Alberta Legal Aid Tariff.*

C. Medical Resolution Committee

Issues: Conflicting medical opinions, WCB Medical Advisor documentary reviews, and the cost of obtaining another medical opinion.

The appeals process is complicated and prolonged when there are differing medical opinions provided by a worker's family physician, specialists, Board Medical Advisors, or WCB Independent Medical Examiners.

WCB Medical Advisors currently conduct documentary reviews of a worker's injuries in the absence of a claimant. Some people believe that the Medical Advisor should be compelled to discuss the matter with the treating physician and interview the worker, especially when a Medical Advisor's advice differs from the diagnosis of the treating physician.

Injured workers who need to obtain another medical opinion for a medical review must pay their own third party medical expenses. Many people believe that such costs are too expensive for workers, and often leave them unable to obtain the medical evidence they need to assist with their appeal.

What the Committee Heard

"Costs of obtaining additional medical opinions should not be incurred "

- **An Employer Submission**

Seventy-four percent of survey respondents rated the WCB process for reviewing medical issues related to a claim as "Poor". Claimants and advocates were far more critical in their assessment of the process than employers.

Thirty-nine percent of survey respondents, whose issues of appeal involved a conflict of medical opinion, indicated they had been required to pay for the cost of acquiring an independent medical opinion.

Recommendation #7

It is recommended that *a Medical Resolution Committee be established under the auspices of the Appeals Commission to review all cases where there is a difference of medical opinion between the medical advisor and the treating physician. A physician of the claimant's choice must be given reasonable opportunity to firstly, participate as a Medical Resolution Committee member (with his or her attendance paid for by the WCB) or, secondly, be contacted by the Committee Chairman to discuss the differing medical opinion of the diagnosis. Where the treating physician declines to attend the Committee review session, the Committee Chairman will represent the input of the treating physician.*

The appellant must be examined by the most appropriate member on the Medical Resolution Committee and the cost of the examination will be paid by the WCB. The Committee's decision will be final and binding on all parties as it relates to the medical facts of the case. A medical report will be forwarded to the Appeals Commission to be used as evidence. The members of the Committee are to be chosen from a continually updated list of specialists appropriate to the injury, selected by a medical body that is independent of the WCB and Appeals Commission, such as the College of Physicians and Surgeons or the Alberta Medical Association. The existence, appointment process, and powers of the Medical Resolution Committee are to be legislated within the WC Act.

Issue: Independent Medical Examiners

What the Committee Heard:

Injured workers expressed considerable concern about the independence, case review protocols, and processes of "WCB" Independent Medical Examiners as well as WCB Internal Medical Advisors. This issue was discussed with the College of Physicians and Surgeons who provided some comfort that the Medical Professions Act would provide appropriate regulatory mechanisms to deal with these concerns. However, no documentation was provided as to how the new Act would achieve this.

Recommendation #8

***It is recommended that** the Minister of Health begin a consultative process with the College of Physicians and Surgeons to ensure that concerns with respect to the independence, case review protocols, and processes of the WCB Independent Medical Examiners and WCB Internal Medical Advisors are dealt with in the Act.*

D. Claim Services Review Committee (CSRC) and Assessment Review Committee (ARC)

Issues: Objectivity of the CSRC and ARC, appointing single-member review committees, and proper weighing of evidence.

Both the CSRC and ARC are internal to the WCB. Some people have raised concerns that objectivity in conducting case reviews and appeals could be compromised, since there is a perceived lack of independence in decision-making processes. Some people believe that evidence is not fairly weighed, and that decisions often appear to be based on opinions that are unfavourable to the claimant.

According to legislation, both the CSRC and ARC can strike single member committees to review and provide a decision on claimant appeals. Some people believe that a "one-member committee" cannot provide an impartial review.

What the Committee Heard

"At this time, I refuse to appear before the CSRC and have all appeals considered on a documentary basis. I view the CSRC as a formality to get to the Appeals Commission."

- **WCB Advocate**

"...there is value in having a review mechanism within the WCB structure, and the CSRC should remain as structured."

- **An Employer**

"Generally speaking, the CSRC only serves to discourage appeals. Decisions made by the CSRC usually just identify WCB policies used by case managers. They seldom confirm proper adjudication pursuant to proper WCB procedures."

- **WCB Claimant**

Thirty-four percent of survey respondents favoured the option of eliminating both the Claims Services Review Committee and the Assessment Review Committee. Twenty-eight percent of respondents suggested retaining the current structure of two separate committees.

The Committee heard from a number of claimants and advocates that the CSRC and ARC are perceived to have an economic interest in the outcome of a claim. For this reason, the quality of decision making from both the CSRC and the ARC will always be questioned.

Recommendation #9

It is recommended *for worker and employer appellants that the CSRC and ARC be eliminated in favour of a mandatory alternative dispute resolution process.*

E. Major Legislative Changes Recommended

Issue: WCB Board power of reconsideration and the right to go to court

The WCB Board of Directors has the authority under Section 8(7) to ask the Appeals Commission to reconsider a decision it has made based on an incorrect interpretation of policy. Some people are concerned that this power of reconsideration undermines the authority of the Appeals Commission.

What the Committee Heard

Looking at legislation that would enable all parties to state a case for the court, the Committee has identified the following examples:

"An appeal lies to the Trial Division from an order, ruling or decision of the commission or appeal tribunal involving:

(a) a question as to the commission's jurisdiction; or

(b) a question of law".

- **Newfoundland's Compensation Act (s.34(1))**

"An appeal lies to the Supreme Court Appeal Division from any order, ruling or decision of the Board or Appeal Commission involving any question as to its jurisdiction or any question of law."

- **Workers' Compensation Act of New Brunswick (s.36(2))**

"The Board of Appeals tribunal may state a case in writing for the Nova Scotia Court of Appeal on any questions of law."

- **Nova Scotia, (s.206 (1))**

"(1) An appeal lies to the trial Division from an order, ruling or decision of the Commission or appeal tribunal involving:

(a) a question as to the Commission jurisdiction or

(b) a question of law

(2) An appeal under subsection (1) shall be made within 30 days from the date of the order, ruling or decision appealed from."

- **Newfoundland, (s.34)**

When asked about the importance of the provision in the legislation to appeal to the courts on WCB related matters, 89% of survey respondents said it was "Very Important". Claimant and Advocate respondents rated this issue as more important than Employer respondents, however, Employer respondents rated it as quite important as well.

Recommendation #10

It is recommended that *an appeal lies to the Court of Appeal from any order, ruling or decision of the Board or Appeals Commission involving any question as to its jurisdiction or any question of law. The appeal shall be made within 30 days from the date of the order, ruling or decision appealed from.*

Issue: Lack of ability to enforce decisions

The Appeals Commission has no enforcement powers. Some people expressed concern that the WCB only partially implements or unnecessarily delays implementation of Appeals Commission decisions. Some people question the Appeal Commission's inability to hold the WCB accountable for implementing appeal decisions.

What the Committee Heard

> *"Our experience is that the WCB implement changes in a timely fashion, and in many cases we have seen the change before we receive a copy of the written decision."*
>
> - **Employer Group**
>
> *"The Appeals Commission has no authority to compel WCB to implement a decision. Therefore the appellant is sometimes left without a legal recourse to enforce their justly earned decision. While this does not happen in most cases, the occurrence of WCB failure to implement is frequent enough to make us aware it is a problem."*
>
> - **Advocate Group**

Thirty-two percent of survey respondents indicated it took less than 3 months to have their appeal decision fully implemented by the WCB. Twenty-three percent of respondents indicated it took 3 – 6 months while 11% said it took 6 - 9 months. Thirty-five percent of respondents indicated it took over 9 months to have their appeal decision fully implemented by WCB.

Seventy-one percent of survey respondents indicated that the Appeals Commission should have the authority to enforce its decisions. Sixty-eight percent of WCB claimants favoured such an authority, compared to 84% of employers and 84% of advocates.

Recommendation #11

It is recommended that *the decision of the Appeals Commission shall be implemented by the WCB within a 30 day regulated timeline unless the WCB alleges that there was a violation of policy as stated in 8(7) of the Act and states a case to the Court of Queen's Bench within 30 days. Section 8(6) of the WC Act is to be revised to state: "Unless the matter is proceeding to court, the Appeals Commission may confirm, reverse, or vary the decision or determination appealed, and the Appeals Commission's decision "shall"(rather than "may") be enforced as if it were made by the Board."*

Issue: Deletion of the Privative Clause in Section 7(1) of the WC Act

What the Committee Heard

In the face of the privative clause, the decision of an administrative tribunal must be characterized as "patently unreasonable" in order to grant a judicial review to obtain relief. This is so restrictive that few true errors in law ever meet the threshold standard of "patently unreasonable". By removing the privative clause, deference is

also reduced. Therefore, someone who believes that they have been treated unjustly by the WCB or Appeals Commission is left with no effective recourse. If an error has occurred in arriving at the final decision on a matter of appeal pertaining to interpretation of policy, the Board and/or the Appeals Commission cannot be held accountable for errors in their decision making. Although it does not happen with frequency, the impact on the injured worker can be devastating or fatal. More often than not, the proper application of policy is the key concern and, at this time, there is nowhere to go to resolve the matter.

Recommendation #12

It is recommended that Section 7(7)1 of the WC Act dealing with the privative clause be deleted and replaced with the drafted legislation that appears in Appendix 2.

F. Appeals Commission

Issue: The need for two levels of appeal

Some people question the need for the two levels of appeal currently provided to injured workers and employers.

What the Committee Heard

> *"The CSRC consists of WCB employees and they are decidedly entrenched in practice and procedure rather than policy and legislation. It is my definite opinion the odds of a successful appeal are directly dependent on which committee member hears the appeal. These decisions are not independent and are not perceived as independent. The perception, rather is one of a necessary evil in order to get to the last level. This wastes time and resources that injured workers cannot afford."*
>
> - **Advocate Submission**

> *"A totally new appeals system should be formed and there should be only one level of appeal and thereafter an appeal to the Courts of Law."*
>
> - **WCB Claimant**

When asked which options they favoured for the first level of appeal, 34% of survey respondents suggested that both the Claims Services Review Committee and the Assessment Review Committee be eliminated.

Recommendation #13

It is recommended that *the Appeals Commission be the only level of appeal preceded by an informal supervisory review and a mandatory alternative dispute resolution process. It is also recommended that the Appeal Commission determine which issues are matters acceptable for appeal.*

Issue: Common payment source for the WCB and the Appeals Commission

Administrative costs and the salaries of the Appeals Commission are paid from the Accident Fund that is administered by the Board of Directors. Currently, the Appeals Commission uses the services of the WCB Human Resources Division, receives all WCB administrative memos, and is part of the WCB employee bonus system. Therefore, some people are concerned that the Appeals Commission does not appear to be, nor in fact is not, independent of the WCB.

What the Committee Heard

> *"I believe that the funding for the Appeals Commission should remain the responsibility of the Workers' Compensation Board."*
>
> - **An Employer Submission**

Recommendation #14

It is recommended that *the full operational and administrative costs of the Appeals Commission be paid from General Revenue to the Ministry of Justice, rather than through the WCB. The WCB would, however, reimburse General Revenue.*

Issue: Common appointment and reporting by the WCB Board and the Appeals Commission

Both the WCB Board and Appeals Commissioners are appointed by the Lieutenant Governor through Order-in-Council on recommendation of the Minister Responsible for the Workers' Compensation Board. Both the Board of Directors and the Appeals Commissioner report to the same Minister.

What the Committee Heard

"We believe the current structure has given rise to the perception that the appeals process is biased in favour of the WCB. This is true regardless of whether the original decision was in favour of the worker or employer.....the perception will continue as long as this relationship exists, and steps should be taken to further distance the appeals process from the WCB."

- **An Employer Submission**

"We support the Appeals Commission funding and reporting being moved to the Department of Justice and the costs paid by government. The Appeals Commission should still have to abide by the Policies set by the WCB in their decisions."

- **Another Employer Submission**

Seventy-nine percent of survey respondents said it was "Very Important" that the Appeals Commission and the WCB Board of Directors be appointed by and report to separate Ministries. Another 14% of respondents indicated that they thought it was "Somewhat Important".

Recommendation #15

It is recommended that *the Appeals Commission be appointed by, and report to, the Ministry of Justice while the Workers' Compensation Board of Directors be appointed by, and report to, the Ministry of Human Resources and Employment.*

Issue: Impartiality of Appeals Commissioners

Appeals Commissioners are chosen on the basis of representing either employers or employees. Some people have commented that this causes certain Appeals Commissioners to be biased or adversarial with appellants who appear before them. In the past, representation was required to ensure a balance of views. Given the evolution of the WCB, this requirement for labour and management representation may be less important.

What the Committee Heard

"The injured are usually in pain and in most cases under medication, and as such, should not have to be humiliated in front of committees and company reps. At best, it's not a time conducive to great communication, and the usual appearance is of an easy target & easy to gang up on."

- **WCB Claimant**

"Our experience is that most Appeals Commissioners are unbiased, but if there is a concern then the appellant should be able to request that a panel consist of a public representative, an employer, and a worker representative. From these three representatives, a chair should be selected."

- **Employer Group**

Recommendation #16

***It is recommended that** the Commissioners, as decision makers, be neutral and not representative of employers, workers, or their affiliation, in order to eliminate the perceived bias of favouring one body over another. Commissioners from a variety of backgrounds, including management and labour, are to be chosen for their proven competencies. Hearing Panel Chairs should, however, be those with legal training. It is recommended that Section 5.1(1)(b) and (c) of the WC Act be amended to support the intent of this recommendation.*

Issue: Ability of parties to an appeal to dispute evidence at an Appeal Panel hearing

What the Committee Heard

The Committee has heard from appellants, advocates and employers that questionable evidence is sometimes presented at Appeal Hearing Panels. Because the Panels do not permit cross-examination, there is no way to dispute the evidence being presented.

The WC Act currently allows parties to call witnesses through the "Notice to Attend" provision. By extending the right to cross-examine witnesses, the Appeal Commission would generally increase the quality of evidence and enhance the quality and effectiveness of the evidence-giving process.

Recommendation #17

***It is recommended that** the Appeal Commission's appeal process allow parties on its own motion or at the application of parties, to call witnesses to give evidence under oath and who may be cross examined. Witnesses, where necessary, shall be subpoenaed. A subpoena may be issued where it appears that the evidence to be presented by the person to be summoned is relevant to the matter, and that the person summoned is reasonably likely to be able to supply the evidence*

Issue: The creation of a tribunal model of appeal hearing requiring greater legal expertise by the Chief Commissioner of the Appeals Commission.

What the Committee Heard

The proposed movement to a more tribunal style of appeal hearing puts much more onus on the Chief Commissioner to have a thorough background, understanding and expertise in legal matters.

Recommendation #18

It is recommended that *all future Chief Commissioners of the Appeals Commission be lawyers and that their appointment be limited to two, three-year terms.*

Issue: Differing rights and access to information

Both appellants and advocates indicate they do not have the same rights and access to information, as do those who are employed by the WCB.

What the Committee Heard

"We feel that the Appeals Commission should implement one of the points identified in their Strategic Plan, which they identified that each case would include a summary of the issues for all parties to use and be identified before the parties meet. The summary should be of the file pertinent to the appeal issue(s)."

- **Employer Submission**

"My clients and I are disadvantaged in that we are not afforded the same rights and access to information as the (Appeal) Advisors."

- **Advocate Submission**

"Differing access to information is very simple to solve. It should be encoded that appellants and their advocates receive the same right to access information as the Appeals Advisors."

- **Advocate Group Submission**

Recommendation #19

It is recommended that *all parties to the appeal shall receive summaries of the facts and authorities (legislation, regulation and policy) being used to present each party's respective case. This information is to be collected by the Clerk's Office and distributed to all parties no less than 14 days prior to the date of the hearing.*

Issue: Adequate recording of Appeal Hearing and writing of appeal decisions by Hearing Registrars

What the Committee Heard

> *"Decision documents continue to be inadequate.... Documents were found to be poorly organized, with inadequate recording of the case record, inadequate recording of the decision rationale, and no record of all of any evidence contrary to the decision being given..."*
>
> - **An Employer Submission ...**

Appeal Registrars commonly draft Hearing Panel decisions. It appears that some decisions are drafted before the hearings are held.

Recommendation #20

It is recommended that *all appeal hearings shall be recorded and a copy of the transcript provided to the appellant upon request.*

Recommendation #21

It is recommended *that Appeal Hearing Panel members draft and finalize their own decisions.*

Issue: Application of the benefit-of-doubt policy

Some people are concerned about the correct application of the benefit-of-doubt policy in the appeals decision-making process. This policy states that, where there is an equal split in evidence, the worker should benefit (General Policies-01-03). Some people believe that the appeal bodies frequently base their decisions on the minority opinion, which often does not favour the worker. These people contend that the benefit-of-doubt is instead given to the employer.

What the Committee Heard

The Committee heard from many that the benefit-of-the-doubt policy in the appeals decision-making process does not favour the worker.

Recommendation #22

It is recommended that *the WC Act be amended so that where there is doubt on an application for benefits in compensation on any issue respecting the application, and the balance of probabilities lays in the evidence, the benefit of the doubt shall be given to the worker (this now appears in policy only). Where the Appeals Commission has difficulty in reaching a decision on each matter under appeal, the benefit of doubt shall apply.*

Recommendation #23

It is recommended that *the decision of the Appeals Commission be filed in the Court of Queen's Bench as an Order of the Court if the decision is not implemented by the WCB within 30 days from the date of the decision.*

Recommendation #24

It is recommended that *along with a decision, where appropriate, the rate of benefit or assessment be decided by the Appeals Commission and implemented by the WCB case manager within 30 days from the date of the decision.*

G. Precedence in Decision Making

Issue: Review of previous Appeal Commission decisions

What the Committee Heard

Sixty-nine percent of survey respondents agreed that, with the assurance of anonymity, all appeal decisions should be published for others to review.

Recommendation #25

It is recommended that all decisions and case facts be published quarterly in a manner that is in keeping with the Freedom of Information and Privacy Protection Act (FOIPP) and (a) made easily available to the public at reasonable cost (b) such availability shall be advertised widely to the public and key WCB stakeholders and (c) information as to the availability of all decisions and case facts be included on the Appeal forms. While respecting each case be dealt with according to it's own merit, the publication of all decisions will support consistency in decision making in instances where circumstances and fact are essentially the same.

H. Formal Training Program

Issues: Lack of preparedness by Appeals Commission Hearing Panel members and written decisions that lack clarity and completeness.

What the Committee Heard

> *"Commissioner and CSRC members have inadequate understanding of jurisprudence and procedure. Panel members often lead witnesses with their questions, repeat questions until the 'wanted' response is given, use improper or irrelevant lines of questions and so on. Panel chairs do not contain or control these situations, again, either through lack of knowledge or the wherewithal to exert authority."*
>
> - **An Employer Survey Respondent**

Some people reported that some Appeals Commission Hearing Panel members are not prepared for the case before them. There are those who believed that Appeals Commission's written decisions lack clarity and completeness. They noted that the written decisions do not always adequately explain why some evidence is given more weight than other evidence.

Recommendation #26

***It is recommended that** the Alberta government require a comprehensive training and continuing education program that is appropriate to their roles for Hearing Chairs (Commissioners), Registrars, Appeals Advisors, and Alternative Dispute Resolution Officers.*

The program is to cover, amongst other matters, WCB legislation, regulation, policy, weighing of evidence, development of independent analytical thinking and writing skills, and usage of a standardized format for recording decisions to meet all of the requirements of administrative law. The costs for this program are to be paid for by General Revenue and reimbursed by the WCB.

I. Timelines

Issue: One-year time limit to appeal decision

Workers and employers have one year to appeal a case manager's decision. Even though an extension may be granted for justifiable reasons, some people are concerned that this period of time is too long. Other people believe that the one-year period is long enough.

What the Committee Heard

When asked what should be the time limit within which a decision of a case manager could be appealed, 39% of survey respondents said more than two years, 18% indicated it should be one to two years, and 21% said one year (the current time limit).

Recommendation #27

***It is recommended that** an appellant be able to appeal a case manager's final decision within two years from the date of the written final decision. For example the Limitations of Actions Act prescribes the two-year limitation for the commencement of most legal actions. Section 8(9) of the WC Act requires revision to accommodate this recommendation.*

Issue: Lack of benefit of due process

What the Committee Heard:

It is submitted that many workers in the past did not have the benefit of due process in their appeals.

Recommendation #28

It is recommended that *all claimants whose appeals were dismissed since the creation of the Appeals Commission be entitled upon application to a further appeal under the new system. The right to a further appeal will be widely advertised in all of Alberta's major daily and weekly newspapers as well as major radio and television stations. Appeals can be made within two years from the date of proclamation of the legislation recommended in the Committee's Final Report.*

Issue: Delays in Appeal Decisions

What the Committee Heard

Thirty percent of survey respondents said it had taken less than 3 months to receive a decision from the Appeals Commission after they filed an appeal of the CSRC decision. Another 30% of respondents indicated it took 3 – 6 months to receive a decision while 17% reported that it took 6 – 9 months for a response. Twenty-three reported it had taken over 9 months to receive a decision from the Appeals Commission.

Recommendation #29

It is recommended that *where the alternate dispute resolution (ADR) process is unsuccessful, the ADR Officer will immediately advise the Clerks' Office of the appellant's intent to proceed with the appeal. From that point, to the time a final decision is made including the date of the written decision, no more than 90 days are to elapse. This time period is to become part of regulation.*

Issue: Introducing new evidence

What the Committee Heard

Eighty-nine percent of survey respondents believed that new evidence or issues should be raised at any stage of the appeals process. Claimant and Advocate respondents (both 90%) favoured the introduction of new evidence in the appeals process slightly more strongly than employers (84%).

Recommendation #30

It is recommended that *the Appeals Commission determine what issues are appealable, accept new issues, and continue to accept new evidence throughout an appeal.*

J. Clients' Bill of Rights

What the Committee Heard

The WCB system was created to protect the injured worker from economic loss and the delay incumbent in litigation, and to protect employers against litigation. However, in relation to this statement, Committee members often heard that WCB clients (workers and employers) were not aware of their rights and entitlements.

Recommendation #31

It is recommended that *the WCB develop a Clients' Bill of Rights and that it become a provision of the WC Act. The Clients' Bill of Rights, among other matters, must include the right to be fully informed of all benefit entitlements and all administrative procedures involved in the process of determining eligibility for Workers' Compensation benefits as well as the appeals process.*

K. Implementation of Committee Recommendations

Recommendation #32

It is recommended that *an Implementation Steering Committee be struck to oversee the implementation of the recommendations contained in this report. Members of the Appeal Systems Review Committee are willing to serve on this Implementation Steering Committee (see Section VI. for a proposed schedule to implement the Review Committee's recommendations).*

[redacted]

The Review Committee proposes that it's recommendations be implemented according to the following schedule.

Timeline	Specific Action	Recommendation #
October 2000	Review Committee Meets with Minister of Human Resources and Employment to discuss recommendations and begin implementation process.	N/A
	Strike Implementation Steering Committee	32
November 2000 – January 2001	Clerk's Office established in the Appeals Commission.	3
	Employers begin to have the option of independent legal advice paid for by the WCB on matters of assessment	6
	All parties to an appeal begin to send their summaries of facts and authorities (legislation, regulation, and policy) being used to present their case to the Clerk's Office for collection and distribution to all parties.	19
	All hearings start to be recorded and a copy of the transcripts provided to the appellant upon request.	20
	All Appeals Commission decisions are now published.	25
	Minister of Health begins a consultative process with College of Physicians and Surgeons to ensure concerns of independence, case review protocols, and processes are dealt with in the Medical Professions Act	8
February – April 2001	Appeals Advisors begin to report to the Ministry of Justice.	15
	Appeals Commissioners to be appointed by, and report to, the Ministry of Justice.	15
	Medical Resolution Committee begins operation.	7

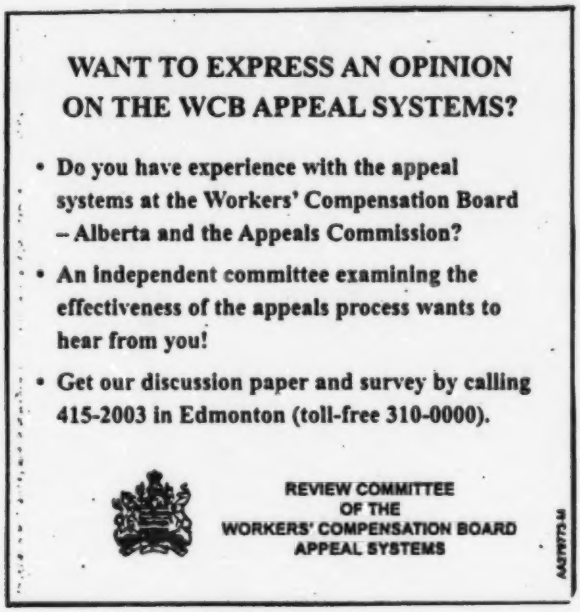
May – July 2001	Appellants (claimants and employers) start to access WCB funding to hire external representatives to represent them.	5, 6
	CSRC and ARC are eliminated and Alternative Dispute Resolution Officers begin work.	2, 9, 13
	New issues and evidence are now admissible at any stage of the appeals process. Appeals Commission now decides which issues are appealable.	30
	A comprehensive training and continuing education program for Hearing Chairs (Commissioners), Registrars, Appeals Advisors and Alternative Dispute Resolution Officers is initiated.	26
August – October 2001	Thirty-day time limit for informal supervisory review is established in regulation.	1
	The right to court by all parties is finalized in legislation.	10
	Section 5.1(1)(b) and (c) amended so Appeal Commissioners come from a variety of backgrounds and are chosen for their proven competencies.	16
	Legislation is changed to reflect the right of subpoena and cross-examination at Appeal Hearing Panels.	17
	Section 8(6) of the WC Act is revised to enforce the implementation of Appeal Commission decisions by the WCB within a 30-day timeline.	11
	WC Act is amended so the benefit of doubt shall be given to the worker.	22
	Section 7(7) of the WC Act dealing with the privative clause is deleted and replaced with the draft legislation that appears in Appendix 2.	12
October –December 2001	Decisions of the Appeals Commission are now filed as an Order of the Court.	23
	Section 8(9) is revised so that any appellant may appeal a case manager's final decision within two years from the date of the written final decision.	27

	The time period in which an appeal is received to the time a final decision is made and from the date of the written decision is now legislated as no more than 90 days.	29
	All claimants whose appeals were dismissed since 1988 can now apply for a further appeal under the new appeals system.	28

[redacted]

Appendix 1	**Sample Newspaper Advertisement**
Appendix 2	**Sample Draft Legislation**
Appendix 3	**Proposed New Appeal Systems Process Map**

Appendix 1
Sample Newspaper Advertisement


WANT TO EXPRESS AN OPINION
ON THE WCB APPEAL SYSTEMS?
• Do you have experience with the appeal systems at the Workers' Compensation Board – Alberta and the Appeals Commission?
• An independent committee examining the effectiveness of the appeals process wants to hear from you!
• Get our discussion paper and survey by calling 415-2003 in Edmonton (toll-free 310-0000).
REVIEW COMMITTEE
OF THE
WORKERS' COMPENSATION BOARD
APPEAL SYSTEMS

Appendix 2
Sample Draft Legislation

7(1) *In respect of any decisions made by the Board, the Appeals Commission shall have final determination and may examine, inquire into, hear and determine all matters and questions arising under this Act and the regulations in respect of:*

(a) decisions of Claimant Services,
(b) determinations of the Board under Section 16(3)
(c) any other matters assigned to it under this or any other Act or the regulations under this or any other Act,

and the decision of the Appeals Commission on the appeal or other matter is final and binding on the Board, subject to the right of the Board to challenge the decision of the Appeals Commission by commencing proceedings in court within thirty days.

7(1.1) *Where application is made for review on a question of law or jurisdiction the Court shall make its determination applying a standard of correctness and shall have regard to:*

(a) the relevant section or sections of this Act that confer jurisdiction on the Board and/or Appeals Commission; and
(b) the purpose of this Act and the tribunal created thereby; and
(c) the nature of the issue before the tribunal, the questions asked and the answers relied upon by the tribunal in making its determination; and
(d) the area or areas of expertise employed by the tribunal or omitted to be employed by the tribunal in making its determination,

and in so doing the Court shall determine whether the issue, as addressed by the tribunal, is within the tribunal's jurisdiction and if, in discharging its duties, the tribunal exercised its jurisdiction in a fair and reasonable manner.

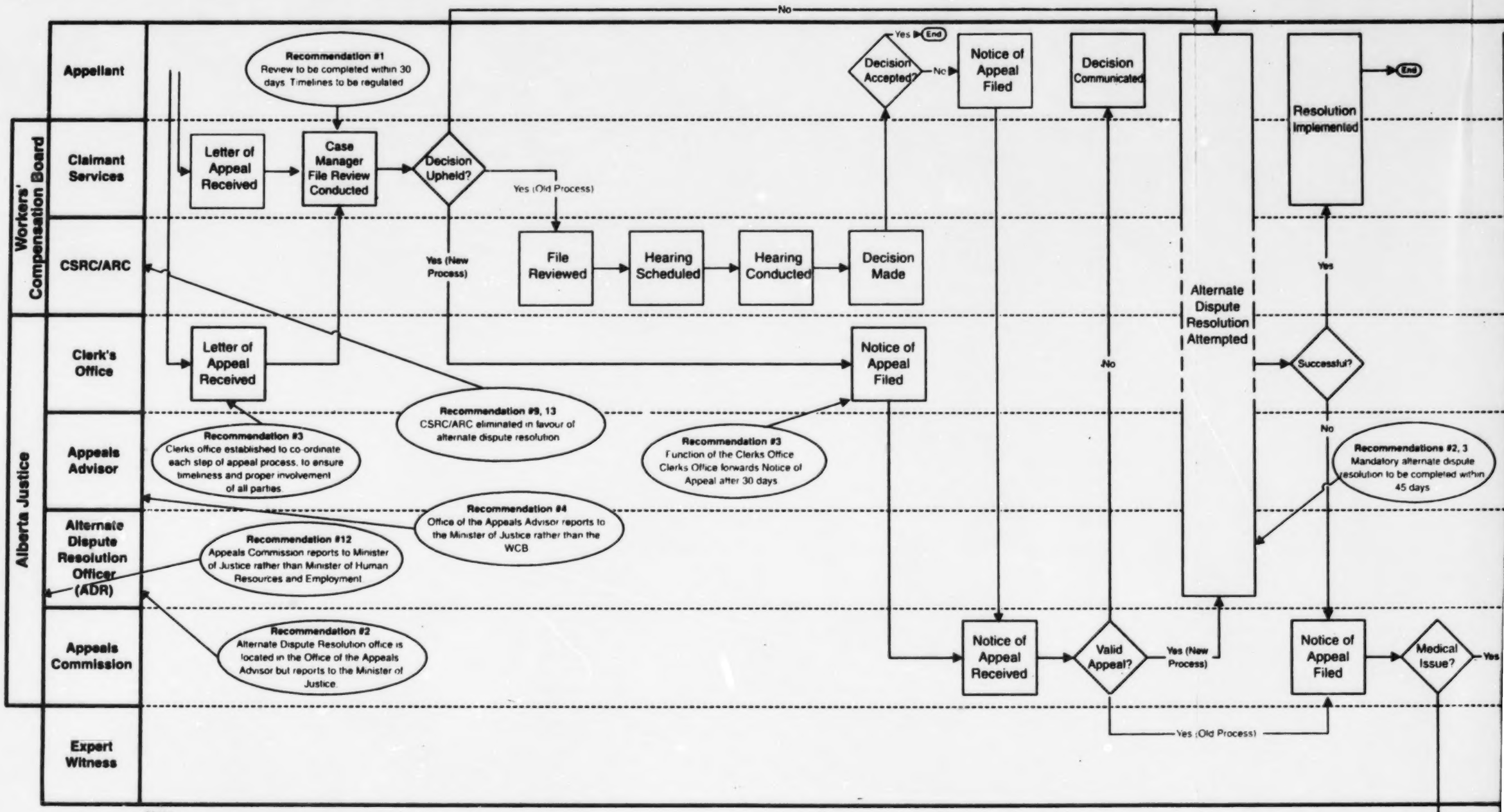
Appendix 3
Proposed New Appeal Systems Process Map

The following page illustrates the proposed new appeal systems' process.

To easily read the maps, keep the following in mind:

- Read from left to right.
- Key players are identified in the left-hand column.
- Each key player has its own 'band', drawn horizontally across the page.
- In each box, functions or actions are described. If a step involves many key players, the box is stretched from the top to bottom of the page to show the players involved in that step.
- If a key player is not involved in a step, broken lines are drawn through that player's band as part of the vertically drawn box.
- Diamonds are drawn to indicate decision points.
- Exit arrows are marked ' yes' or 'no', leading to the next step in the process.
- At the bottom of the map, the average number of days to complete a step or a group of steps is shown.

Recommended Appeals Process

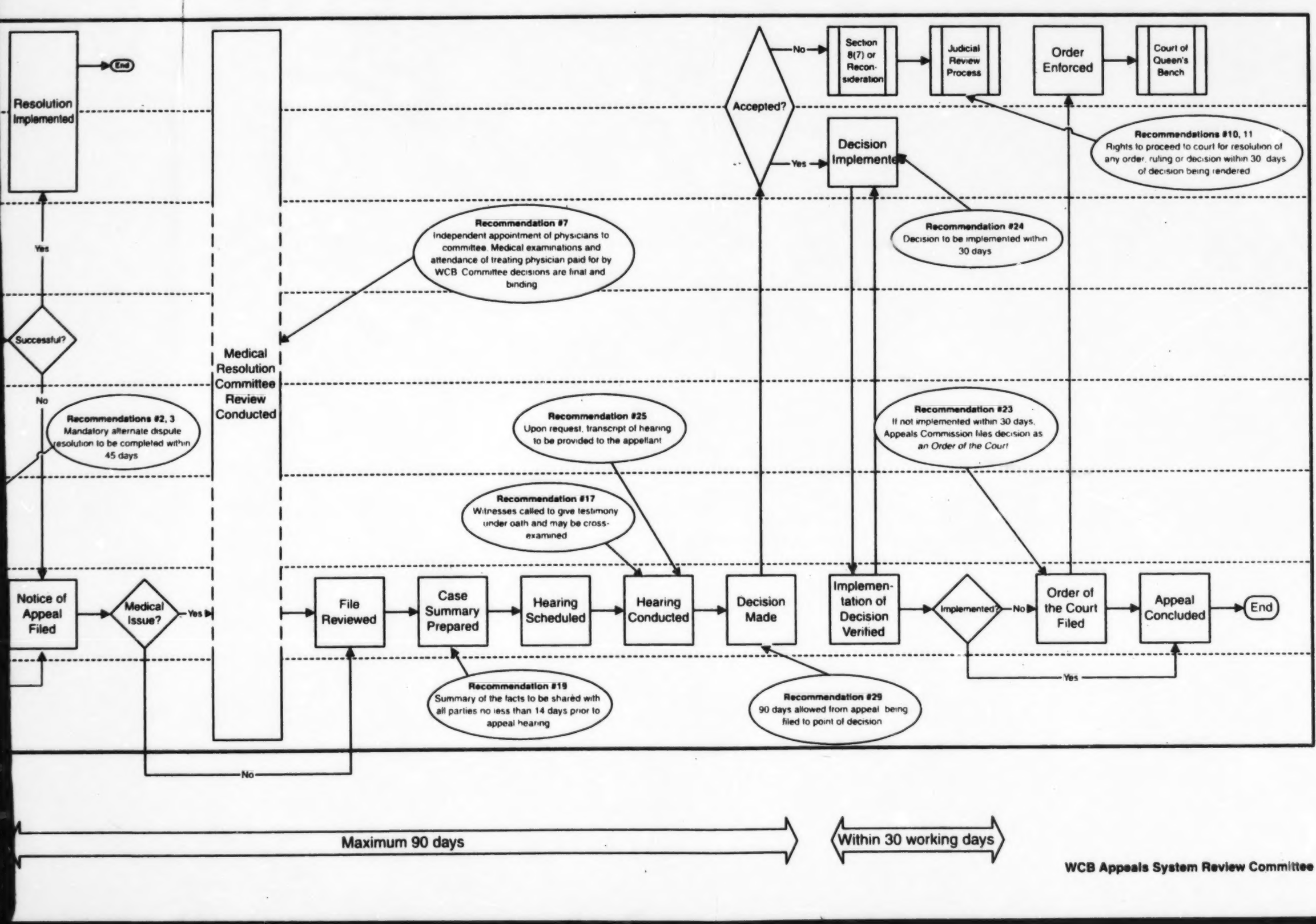

Workers' Compensation Board
Alberta Justice
Appellant
Claimant Services
CSRC/ARC
Clerk's Office
Appeals Advisor
Alternate Dispute Resolution Officer (ADR)
Appeals Commission
Expert Witness
Recommendation #1
Review to be completed within 30 days. Timelines to be regulated
Letter of Appeal Received
Case Manager File Review Conducted
Decision Upheld?
Yes (Old Process)
Yes (New Process)
File Reviewed
Hearing Scheduled
Hearing Conducted
Decision Made
Decision Accepted?
Yes
End
No
Notice of Appeal Filed
Decision Communicated
Alternate Dispute Resolution Attempted
Resolution Implemented
End
Yes
Successful?
No
Recommendations #2, 3
Mandatory alternate dispute resolution to be completed within 45 days
Letter of Appeal Received
Notice of Appeal Filed
Recommendation #3
Clerks office established to co-ordinate each step of appeal process, to ensure timeliness and proper involvement of all parties
Recommendation #9, 13
CSRC/ARC eliminated in favour of alternate dispute resolution
Recommendation #3
Function of the Clerks Office Clerks Office forwards Notice of Appeal after 30 days
Recommendation #4
Office of the Appeals Advisor reports to the Minister of Justice rather than the WCB
Recommendation #12
Appeals Commission reports to Minister of Justice rather than Minister of Human Resources and Employment
Recommendation #2
Alternate Dispute Resolution office is located in the Office of the Appeals Advisor but reports to the Minister of Justice.
Notice of Appeal Received
Valid Appeal?
Yes (New Process)
Yes (Old Process)
Notice of Appeal Filed
Medical Issue?
Yes

Note: Red indicates old process steps eliminated

Maximum 30 days

Maximum 45 days

Recommended Appeals Process


Resolution Implemented
End
Yes
Successful?
No
Recommendations #2, 3
Mandatory alternate dispute resolution to be completed within 45 days
Medical Resolution Committee Review Conducted
Recommendation #7
Independent appointment of physicians to committee. Medical examinations and attendance of treating physician paid for by WCB. Committee decisions are final and binding
Accepted?
No
Section 8(7) or Reconsideration
Judicial Review Process
Order Enforced
Court of Queen's Bench
Yes
Decision Implemented
Recommendations #10, 11
Rights to proceed to court for resolution of any order, ruling or decision within 30 days of decision being rendered
Recommendation #24
Decision to be implemented within 30 days
Recommendation #25
Upon request, transcript of hearing to be provided to the appellant
Recommendation #23
If not implemented within 30 days, Appeals Commission files decision as an Order of the Court
Recommendation #17
Witnesses called to give testimony under oath and may be cross-examined
Notice of Appeal Filed
Medical Issue?
Yes
No
File Reviewed
Case Summary Prepared
Hearing Scheduled
Hearing Conducted
Decision Made
Implementation of Decision Verified
Implemented?
No
Yes
Order of the Court Filed
Appeal Concluded
End
Recommendation #19
Summary of the facts to be shared with all parties no less than 14 days prior to appeal hearing
Recommendation #29
90 days allowed from appeal being filed to point of decision
Maximum 90 days
Within 30 working days

WCB Appeals System Review Committee